



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2017-0267; FRL-9975-78-Region 7]

Approval of Implementation Plans; State of Iowa; Elements of the Infrastructure SIP Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve certain elements of a 2013 State Implementation Plan (SIP) submission from the State of Iowa for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). States are required to have a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS. Whenever EPA promulgates a new or revised NAAQS, states are required to make a SIP submission establishing that the existing approved SIP has provisions necessary to address various requirements to address the new or revised NAAQS or to add such provisions. These SIPs submissions are commonly referred to as "infrastructure" SIPs. The infrastructure SIP requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2017-0267. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7039, or by email at hamilton.heather@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. Background
- II. What is Being Addressed in this Document?
- III. Have the Requirements for Approval of the SIP Submission Been Met?
- IV. EPA's Response to Comments
- V. What Action is EPA Taking?
- VI. Statutory and Executive Order Reviews

I. Background

EPA received Iowa's 2010 SO₂ NAAQS infrastructure SIP submission on July 29, 2013. On September 29, 2017, EPA proposed to approve elements of this submission. See 82 FR 45550. In conjunction with the September 29, 2017 notice of proposed rulemaking (NPR), EPA issued a direct final rule (DFR) approving the same elements of the 2010 SO₂ NAAQS infrastructure SIP. See 82 FR 45497. However, in the DFR, EPA stated that if EPA received adverse comments by October 30, 2017, the action would be withdrawn and not take effect. EPA received three comments prior to the close of the comment period which were adverse. EPA withdrew the DFR on November 14, 2017. See 82 FR 54300. This action is a final rule based on the NPR. A detailed discussion of Iowa's SIP submission and EPA's rationale for approving the SIP submission were provided in the DFR and the associated Technical Support Document in the docket for this rulemaking and will not be restated here, except to the extent relevant to our response to the public comment we received.

II. What is Being Addressed in this Document?

EPA is approving certain elements of the 2010 SO₂ NAAQS infrastructure SIP submission from the State of Iowa received on July 29, 2013. Specifically, EPA is approving Iowa's submission

with regard to the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II) - prevent of significant deterioration of air quality (prong 3), (D)(ii), (E) through (H), and (J) through (M).

EPA is not taking action at this time on the following elements for the 2010 SO₂ NAAQS: section 110(a)(2)(D)(i)(I) - significant contribution to nonattainment (prong 1) and interfering with maintenance of the NAAQS (prong 2), and section 110(a)(2)(D)(i)(II) - protection of visibility (prong 4).

III. Have the Requirements for Approval of the SIP Submission Been Met?

The state met the public notice requirements for SIP submission in accordance with 40 CFR 51.102. The state initiated public comment from April 6, 2013, to May 8, 2013. One comment was received and adequately addressed in the final SIP submission. This submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of the docket for this rulemaking, the submission meets the applicable substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. EPA's Response to Comments

The public comment period on EPA's proposed rule opened September 29, 2017, the date of its publication in the **Federal Register**, and closed on October 30, 2017. During this period, EPA received three public comments on the proposal to approve certain elements of Iowa's 2010 SO₂ infrastructure SIP submission, one of which is addressed below. The other two comments were not specific to this action, which is concerned with evaluating whether Iowa has the required elements in place to implement, maintain, and enforce the NAAQS, and thus no further response is required.

Comment: The commenter stated that EPA must act on 110(a)(2)(D)(I) prong 1 (significant contribution to nonattainment), prong 2 (interference with maintenance), and 110(a)(2)(D)(II), prong 4 (interference with visibility protection.) The commenter asserted that EPA had stated in the Technical Support Document (TSD) for the proposed action that "EPA WILL NOT ACT on [prongs 1, 2 and 4]" (emphasis added in comment). The commenter went on to state that EPA was therefore stating that it "will never act and does not need to act on these elements." The commenter further stated that EPA does not have the discretionary authority to not act on a state's submission. The commenter indicated that if EPA does not believe prongs 1 and 2 are approvable, then EPA must disapprove; if EPA

does not believe prong 4 is approvable due to the lack of an approved regional haze program, then EPA must disapprove the state's submission and promulgate a FIP to address regional haze. The commenter concluded by stating that the comment letter constitutes notice of intent to sue the agency for failure to perform its nondiscretionary duty under 110(k)(2) to act on Iowa's prongs 1, 2, and 4.

EPA's response: EPA disagrees with this comment. First, EPA's TSD¹ does not state that "EPA will not act" on the SIP submission with respect to prongs 1, 2, and 4 of section 110(a)(2)(D), and does not imply that EPA "will never act and does not need to act on these elements." Rather, the TSD states, "With this action, EPA will not be acting on 110(a)(2)(D)(i)(I) - prongs 1 and 2, and 110(a)(2)(D)(i)(II) - prong 4." That is, the TSD merely explains that EPA is not taking action on prongs 1, 2, and 4 *in this rulemaking*, not that it does not have an obligation to act on those elements of the SIP submission at issue, or that it will never do so.

EPA is not required to act on the prong 1, 2, or 4 elements of Iowa's 2010 SO₂ infrastructure SIP submission in this particular rulemaking. Although EPA agrees with the commenter that it has an obligation to take action under section 110(k) on

¹www.regulations.gov, Docket: EPA-R07-OAR-2017-0267, Supporting Documents; R7 Technical Support Document.

SIP submissions, EPA disagrees with the argument that the Agency cannot elect to act on individual parts or elements of a state's infrastructure SIP submission in separate rulemakings, as it deems appropriate. Section 110(k) of the CAA authorizes EPA to approve a SIP submission in full, disapprove it in full, or approve it in part and disapprove it in part, or conditionally approve it in full or in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve state SIP submissions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a SIP submission without either approving or disapproving the plan as a whole. See S. Rep. No. 101-228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz v. EPA*, 832 F.2d 1071 (9th Cir. 1987)).

EPA interprets its authority under section 110(k) of the CAA as affording the Agency the discretion to approve, disapprove, or conditionally approve, individual elements of Iowa's infrastructure SIP submission for the 2010 SO₂ NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(d)(i)(I) and (II), as severable from other infrastructure SIP elements and interprets section 110(k) as allowing it to act on individual severable elements or

requirements in a SIP submission. In short, EPA has the discretion under section 110(k) of the CAA to act upon the various individual elements of a state's infrastructure SIP submission, separately or together, as appropriate. EPA will address the remaining elements of Iowa's 2010 SO₂ infrastructure SIP submission in a separate rulemaking action or actions.

In EPA's rulemaking proposing to approve Iowa's infrastructure SIP for the 2010 1-hour SO₂ NAAQS, EPA stated that it was not taking any action with respect to the good neighbor provisions in section 110(a)(2)(D)(i)(I) for this NAAQS. EPA understands the commenter's concern with respect to interstate transport. EPA will evaluate whether it is appropriate to make a finding of failure to submit in a separate action as the state did not make a submission to satisfy 110(a)(2)(D)(i)(I).

With respect to the comment on prong 4 in particular, although EPA's evaluation of a state's SIP submission can be related to the status of that state's regional haze program,² Iowa's regional haze program is not relevant here because EPA is not taking action on that element of Iowa's SO₂ infrastructure SIP submission in this rulemaking.

² EPA's 2013 Guidance of Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) provides that "[o]ne way in which prong 4 may be satisfied for any relevant NAAQS is through an air agency's confirmation in its infrastructure SIP submission that it has an approved regional haze SIP....." 2013 Guidance at 33, https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.

Finally, a public comment submitted on a proposal does not constitute notice of intent to sue the Administrator for failure to perform a nondiscretionary duty. Clean Air Act section 304(b) (2) requires 60 days' notice of a civil action against the Administrator for an alleged failure to perform a non-discretionary duty *to the Administrator*. EPA's regulations require that service of notice to the Administrator "shall be accomplished by certified mail addressed to the Administrator, Environmental Protection Agency, Washington, DC 20460." 40 CFR 54.2(a). The commenter's public comment submitted via regulations.gov does not satisfy the regulatory requirements for notices of intent to file suit against the Administrator for failure to perform a non-discretionary duty.

V. What Action is EPA Taking?

EPA is taking final action to approve Iowa's 2013 infrastructure SIP submission for the 2010 SO₂ NAAQS with regard to the following elements of section 110(a) (2): (A), (B), (C), (D) (i) (II) - prevent significant deterioration of air quality (prong 3), (D) (ii), (E) through (H), and (J) through (M).

EPA is not taking action on sections 110(a) (2) (D) (i) (I), prongs 1 and 2, and 110(a) (2) (D) (i) (II), prong 4. The agency will act on those elements of the SIP submission in a separate rulemaking action or action.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur Dioxide, Reporting and recordkeeping requirements.

Dated: March 8, 2018.

James B. Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q Iowa

2. Section 52.820 is amended by adding new paragraph (e)(47) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
* * * * *				
(47) Sections 110(a)(1) and (2) Infrastructure Requirements 2010 Sulfur Dioxide NAAQS.	Statewide	7/23/2013	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), D(i)(II) prong 3 only, D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). [EPA-R07-OAR-2017-0267; FRL-9975-78-Region 7].
* * * * *				

[FR Doc. 2018-05631 Filed: 3/21/2018 8:45 am; Publication Date: 3/22/2018]